IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B. CIVIL SPECIAL APPEAL (W) NO.1251/2006

Surendra Kumar Jain
Vs.
Rajasthan Co-operative Diary Federation Limited

Date of Judgment :: 12 February, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Sanjeev Prakash Sharma for the appellant.

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BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)(ORAL):

REPORTABLE

The dispute in this appeal relates to the appellant's claim for unutilised leave salary for additional 98 days.

Facts of the case, briefly stated, are that the appellant who was Stenographer Grade I in the service of the State Government in the Gazetteers Department joined the Rajasthan Co-operative Dairy Federation Limited (in short, 'the Federation') on deputation on 1.6.1981. On 29.1.1986, on his request, he was allowed voluntary retirement from the government service with effect from 31.10.1985 in terms of rule 244 (1) of the Rajasthan Service Rules (RSR). Prior to that, on 16.3.1985 the Federation had

taken a decision to absorb him, and offer of appointment had been issued to the appellant on 1.5.1985. The appellant had sought certain clarifications and on 12.9.1985 the Federation had passed a resolution, inter alia to allow him pensionary benefits in addition to emoluments received by him from the government on his voluntarily retiring from government service. On 8.2.1986, the appellant was paid by the Government retiral benefits which included unutilised leave salary for 175 days in terms of rule 91B of the RSR.

The appellant who joined the Federation pursuant to the formal order of appointment on 31.10.1985, retired from service of the Federation on attaining the age of superannuation i.e. 58 years on 31.7.1999. On retirement he was paid, among other things, unutilised leave salary which was later found to be in excess of his entitlement. The appellant was called upon to refund the amount, and a dispute arose. According to the appellant, for the services rendered in the Federation, he was entitled to unutilised leave salary for the period of 223 days for non-utlization of privilege leave as per his entitlement. According to him, his appointment in the Federation was a fresh appointment and for the services rendered, he was entitled to privilege leave and for the unutilised leave period, he was entitled to salary in terms of rule 91B of the RSR. According to the respondent, on

the other hand, his entitlement to privilege leave/unutilised leave salary has to be worked out taking into account the entire service. The learned Single Judge upheld the stand of the respondent and rejected the writ petition of the appellant seeking direction for payment of unutilised leave salary for additional period of 98 days. He has come in appeal.

The Rajasthan Co-operative Dairy Federation Employees (Non-Workmen) Service Regulations, 1980 (in short, 'the Regulations') lays down that the posts under the Federation shall be filled by one or the other methods, namely, (1) direct recruitment; (2) promotion; (3) deputation ; (4) contract and; (5) absorption of such employees who have worked at least for 3 years on deputation in the Corporation/Federation.

The appellant can not contend that he was appointed in the service of the Federation by direct recruitment, for, the procedure laid down in the Regulations for direct recruitment was indisputably not followed. Indeed, the resolution dated 16.3.1985 (supra) stated in express words that the appellant who was working on deputation since 1.6.1981 was proposed to be “absorbed” permanently in the Federation on the same post with effect from the date he rejoins after getting himself relieved from the services of the Government of Rajasthan.

At this stage, it may be mentioned that many employees of the State Government had been deputed in different autonomous bodies/enterprises where they came to be absorbed in course of time, and a question arose about their entitlement to different retiral benefits. A general decision was taken which is contained in Appendix IX to the Rajasthan Civil Services (Pension) Rules, 1996; the relevant part thereof may usefully be quoted as under :-

> “The question of granting terminal benefits to the Rajasthan Government servants going over to the State enterprises/Autonomous Bodies and vice versa on immediate absorption basis has been under consideration of the Government and it has been decided that the appointment of Government servants in the State public enterprises/autonomous bodies and vice versa will henceforth be on following terms and conditions :
> (1) . . . . . .
> (2) . . . . . .
> (3) . . . . . .
> (4) Pensionary benefits -
>
> (i) . . . . . .
>
> (ii) Pension and gratuity :-
>
> (A) A Government servant eligible for pension and selected/absorbed in a State enterprise/autonomous body having a pension scheme should exercise an option within six months of the date of his resignation, for either of the following two alternatives :-
>
> (a) either to count the service rendered under the Rajasthan Govevernment for pension in public sector undertaking/autonomous body.
>
> (b) or to receive pro rata retirement benefits for the service rendered under the Rajasthan Government.
> . . . . . .

(B) In case the Government servant opts in favour of sub-clause (a) of clause (A) above, he will be eligible to draw pension in accordance with the rules of the Public Sector Undertaking/Autonomous Body (organisation) for the combined service under the Rajasthan Government and that under the Public Sector Undertaking/Autonomous Body (organisation) on his final retirement from that body. If he resigns from service of the Public Sector Undertaking/A.B. (organisation), his resignation will be treated as resignation from Rajasthan Government service entailing forfeiture of past service including that under the Government and consequent loss of pensionary benefits for the combined service.

(5) Leave

A Government servant taking up an appointment in a State public enterprise will be entitled to encashment of privilege leave to his credit at the time of acceptance of his resignation from Government service, subject to a limit of 240 days. Half pay leave will stand forfeited."

Rule 91B provides for cash payment in lieu of unutilised privilege leave on the date of retirement. The rule so far as relevant runs as under :-

"**Rule 91B. Cash payment in lieu of unutilised privilege leave on the date of retirement** :(1) A Government servant on retirement from service on superannuation, invalid compensation pension or retirement pension under rule 50 and 53 of Rajasthan Civil Services (Pension) Rules, 1996 shall be paid cash equivalent to leave salary in respect of the period of unutilised privilege leave not exceeding 300 days at his/her credit at the time of retirement.

Note : . . . . . .

(2)The cash payment of leave salary admissible under sub-rule(1) above shall be paid on retirement in one lump sum as one time settlement."

From a conjoint reading of the above provisions, it would appear that a government servant on superannuation from the service is entitled to salary for the unutilised number of privilege leave subject to maximum of 300 days (prior to 2.4.1998 ceiling was 240 days). Had the appellant continued in the service of the State Government and retired as such, he would have been entitled to unutilised leave salary for maximum of 300 days. The point for consideration is whether by reason of his absorption in the service of the Federation, he can claim the same number of privilege leave and for unutilised part thereof, salary upto 300 days ?

The appointment of the appellant in the Federation with effect from 31.10.1985 pursuant to the resolution of the Federation was no doubt a fresh appointment, by absorption, which is one of the methods of recruitment provided in the resolution but that does not mean that he would be entitled to the pensionary benefits de hors the rules framed in the case of employees transferred and later absorbed in other enterprise/autonomous bodies. As seen above, in the case of government servant opting for absorption and pension scheme, the total period of service i.e. the “Combined Service”, rendered under the government as well as undertaking/autonomous body has to be taken into account, and if this is the position, it would be difficult to treat the service rendered by the

appellant under the State Government and the Federation in two different compartments for the purpose of pensionary benefits. The appellant was allowed salary for the unutilised number of privilege leave to the extent of 175 days by the Government at the time of his retirement from government service and if the said period has to be counted for the purpose of computing his pensionary benefits, he could be entitled to unutilised leave salary for only 125 days.

It is relevant to mention here that regulation 12(i) of the Regulations which deals with privilege leave was amended by office order dated 27.4.1987 in pursuance of the resolution dated 12.3.1987 as under :-

> "The admissibility of privilege leave shall be calculated as per the RSR amended from time to time for the employees of the Federation covered under RCDF Employees (Non-Workmen) Service Regulations."

When attention of the counsel was drawn to the above provision and it was observed that the appellant cannot claim unutilised leave salary higher than what is provided in rule 91B, it was submitted that by the said amendment, the Federation only decided to calculate the admissibility of number of privilege leave as per RSR without adopting the RSR as a whole. We do not find any substance in the submission.

From a plain reading of regulation 12(i), it is apparent that the entitlement of the employees of the Federation as to privilege leave has to be worked out in accordance with the provisions of the RSR and a bare glance of rule 91B of the RSR leaves no room for doubt that the entitlement to unutilised leave salary can not exceed 300 days. The stand of the respondent to the effect that the appellant is entitled to unutilised leave salary, not exceeding 300 days as a whole therefore appears to be in accordance with law. The learned Single Judge thus did not commit any error in dismissing the writ petition.

We find no merit in this appeal which is accordingly dismissed.

[MOHAMMAD RAFIQ],J. **[S.N.JHA],CJ.**

Skant/-